

***United States Court of Appeals
for the Second Circuit***



APPELLEE'S BRIEF

Original & Affidavit of Mailing

77-1447

To be argued by
RICHARD L. HUFFMAN

United States Court of Appeals
FOR THE SECOND CIRCUIT

Docket No. 77-1447

UNITED STATES OF AMERICA,

—against—

JOSE EDGAR LOPEZ,

Appellee,

Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

BRIEF FOR THE APPELLEE

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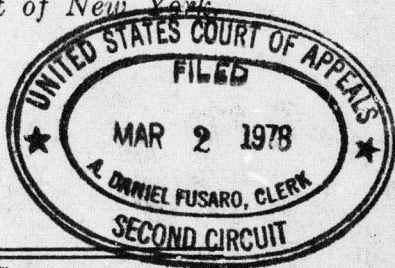


TABLE OF CONTENTS

	PAGE
Preliminary Statement	1
Statement of Facts	2
ARGUMENT:	
POINT I—The prosecutor's summation did not violate defendant's Fifth Amendment rights	5
POINT II—There was no error in the court's instruc- tion to the jury	12
POINT III—The evidence against defendant was more than sufficient to sustain his conviction	13
CONCLUSION	18

TABLE OF CASES

<i>Glasser v. United States</i> , 315 U.S. 60 (1942)	14
<i>United States v. Armedo-Sarmiento</i> , 545 F.2d 785 (2d Cir.), <i>cert. denied</i> , 430 U.S. 917 (1977) ...	11
<i>United States v. Briggs</i> , 457 F.2d 908 (2d Cir.), <i>cert. denied</i> , 409 U.S. 986 (1972)	7
<i>United States v. Bubar</i> , Docket No. 76-1140, slip op. 4159 (2d Cir. 1977)	7, 11
<i>United States v. Burse</i> , 531 F.2d 1151 (2d Cir. 1976)	11
<i>United States v. Canniff</i> , 521 F.2d 565 (2d Cir.), <i>cert. denied</i> , 423 U.S. 1059 (1976)	10
<i>United States v. Dioguardi</i> , 492 F.2d 70 (2d Cir.), <i>cert. denied</i> , 419 U.S. 873 (1974)	11

	PAGE
<i>United States v. Floyd</i> , Docket No. 76-1462, slip op. 3495 (2d Cir. 1977)	11
<i>United States v. Indiviglio</i> , 352 F.2d 276 (2d Cir. 1965)	7
<i>United States v. Marchisio</i> , 344 F.2d 653 (2d Cir. 1965)	14
<i>United States v. Perez</i> , 426 F.2d 1073 (2d Cir.), <i>aff'd</i> , 402 U.S. 146 (1971)	7
<i>United States v. Rodriguez</i> , 556 F.2d 638 (2d Cir. 1977)	8, 11
<i>United States v. Smith</i> , 500 F.2d 293 (6th Cir. 1974)	11

OTHER AUTHORITIES

Rule 30, Federal Rules of Criminal Procedure	7
Rule 52(b) Federal Rules of Criminal Procedure ...	7

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BRIEF FOR THE APPELLEE

Preliminary Statement

Jose Edgar Lopez appeals from a judgment of the United States District Court for the Eastern District of New York (Costantino, J.) entered on September 23, 1977, convicting him, after a jury trial, of a one count indictment. Lopez was charged with knowingly and unlawfully conspiring with Arturo Romero, an unindicted co-conspirator, and others to import into the United States from Venezuela, and to possess with intent to distribute, a quantity of cocaine in violation of Title 21, United States Code, Section 846.

Lopez was initially sentenced to five years imprisonment, of which six months were to be served in prison; the balance, on probation. Additionally, the court imposed a special parole term of ten years and required his deportation. However, upon further consideration, the

court stated that should Lopez voluntarily agree to depart the United States prior to his surrender, the court would entertain a motion for reduction of sentence. Lopez's sentence was stayed pending this appeal and he is presently free on bail.

Lopez raises three issues on appeal: *First*, that the prosecutor's summation violated defendant's Fifth Amendment right against self-incrimination; *Second*, that the district court failed to properly instruct the jury that no adverse inference could be drawn from defendant's failure to testify; and *Third*, that there was insufficient evidence to support the verdict against defendant.

Statement of Facts

During the afternoon of February 1, 1977, Arturo Romero was arrested at John F. Kennedy International Airport while carrying 328 grams of cocaine (T. A. 32-33 and T. 22-23).¹ After initially refusing to cooperate and then attempting to mislead government agents, Romero ultimately agreed to assist law enforcement authorities (T. 219-220). At about 6:00 p.m. that day, he called his co-conspirator, defendant Jose Edgar Lopez, at Lopez's home phone number, which Romero had memorized (T. 24, A. 37). The following telephone conversation—which was recorded by government agents—ensued:

* * * * *

¹ The Government has followed defendant's system of pagination. All references to the transcript are preceded by a "T". When the "T" is followed by an "A", the transcript referred to is dated July 28, 1977; when the "T" is followed by a "B", the transcript referred to is dated July 29, 1977; when the "T" is immediately followed by a number, the transcript referred to is dated July 26 or 27, 1977.

Romero: Yes . . . look . . . I . . . I'm out here, at the airport, pal . . . if you can . . . how is it that I was here until 5 o'clock . . . I've been calling you and no . . . no . . .

Lopez: But did it go well for you?

* * * * *

[discussion of Romero's difficulty with a provisional passport]

Romero: . . . I don't know where to go, what hotel should I go to? . . .

Lopez: Come over to 55th and 7th Avenue, I'll wait for you on the corner over there.

Romero: O.K.

Lopez: Listen . . .

Romero: Aha . . .

Lopez: It went well, right?

Romero: Well, yes, it went well, pal.

Lopez: You aren't lying to me?

Romero: No, I'm not lying, everything is all right.

Lopez: Careful brother!

Romero: No, don't worry.

Lopez: You're not going to cause me any problem, no?

Romero: No, don't worry.

Lopez: You're not going to get me into any trouble, Arturo.

Romero: No, don't worry.

* * * * *

(T. 30-34, Ex. 14)

Romero, under surveillance by five agents of the Drug Enforcement Administration (three of whom testified at trial), then travelled to the northeast corner of 55th Street and Seventh Avenue in Manhattan, arriving at approximately 7:30 p.m. (T. A. 18). He was carrying a "dummy load" of narcotics, which had been placed in his suitcase (T. A. 38-39). It was very cold and Romero was lightly dressed: consequently, he stood outside for only a minute or two before entering a coffee shop situated on that corner (T. 35-36, 222, 223). Lopez was already standing across the street, part way up the Seventh Avenue block, when Romero arrived (T. A. 18-20 and T. 222). Lopez was also lightly dressed, wearing only a light jacket and sweater (T. 223, T. A. 20). However, despite the extreme cold, he remained standing across the street from the coffee shop, looking into it, for approximately 45 minutes (T. 36, 223, T. A. 20). Finally, at about 8:15 p.m., Lopez entered the coffee shop (T. 36, 224, T. A. 20). He nodded to Romero, who was seated in a booth, and then stepped up to the coffee shop counter (T. 37, T. A. 41). Romero immediately got up and walked over to the counter, where Lopez told him to wait outside (T. 37). Romero stood outside briefly, and then re-entered the vestibule of the coffee shop (T. 37, T. A. 42).

Moments later Lopez joined Romero in the vestibule and commented that there were some strange people in the coffee shop (T. 37). Defendant and Romero then exited and hailed a taxi. As they were about to enter the cab they were arrested (T. 38, T. A. 42). The suitcase containing the "dummy load" of cocaine was still in Romero's physical possession at the time of defendant's arrest (T. 39).

After his arrest Lopez was advised of his constitutional rights. He then denied that he knew Arturo Romero and claimed that he was waiting at the corner for Romero at the request of a friend, Edgar Garces, who was

Romero's brother (T. 228, T. A. 43). Lopez was searched and his address book, which contained Romero's phone number and address in Venezuela, was seized (T. A. 46, 47). With Lopez's consent a tape recording of his voice was then made, but he continued to deny ever having spoken to Arturo Romero (T. A. 49). However, at trial it was stipulated that Lopez knew Romero (T. A. 46).

Romero, a twenty-two year old Venezuelan, made a total of four trips to the United States, including the aborted February 1, 1977 trip (T. 11, 12). During defendant's trial, Romero testified that he had met Lopez during his, Romero's, second trip to the United States and that on his third trip to this country Romero's relationship with Lopez blossomed into a friendship (T. 14-16). Shortly before returning to Venezuela in either July or August of 1976, Romero went to Lopez's apartment, where they discussed the possibility of Romero bringing cocaine into the United States (T. 16-19). After Romero's return to Venezuela, Lopez called him and advised Romero that a man called Caesar would contact him concerning the cocaine (T. 19). Caesar then contacted Romero, gave him the cocaine, and made arrangements for Romero's trip to New York (T. 20-22).

After the government concluded its case, the defense rested without offering any evidence.

POINT I

The prosecutor's summation did not violate defendant's Fifth Amendment rights.

Lopez complains that the prosecutor abridged his Fifth Amendment rights by indirectly commenting on Lopez's failure to testify. In support of this claim, defendant points to two comments made by the prosecutor.

The first comment, which was mentioned both in summation and rebuttal summation, asked defense counsel to

account for the telephone call on February 1, 1977 from Romero to defendant. The language used during the initial summation was:

I'd like you to read that translation, which you'll have in the jury room again. I want to hear I'm interested in hearing in summation Mr. Rapoport's explanation of it. No names at the beginning. 'Who am I talking to? With a friend. It's me. Yes, I already know. Did it go well? It went well' (T. B. 21).

During his rebuttal summation, the prosecutor said:

Gee, you know, that phone call I asked, I thought maybe there would be some explanations [sic] for the languages [sic] in the phone call. If there was some, I guess I must have missed it (T. B. 68).

The second prosecutorial comment complained of was made only during the initial summation. The prosecutor, using the following language, asked defense counsel to support his suggestion that defendant was employed by producing defendant's work records:

In conclusion, Mr. Rapoport, as I said before, has subpoena powers. Do you remember he asked the so-called question, got in a lot of stuff about where Mr. Lopez was supposedly working. Where are the work records if he was working at this place, whatever it was, on that day? Could have brought them in [sic] (T. B. 25).

As to Lopez's claim that the mention of counsel's failure to explain the taped telephone recording amounted to a comment on the defendant's failure to testify, the government's position is that the references were not error since if read literally, they obviously did not refer to the defendant's decision not to testify, nor can they reasonably be interpreted as such when examined in the context both of the summations and the entire trial.

Regarding Lopez's further claim that the prosecutor unfairly referred to Lopez's failure to produce evidence, not only was the comment proper in the context in which it was made, but it is noteworthy that when counsel objected to this language, the precise curative instruction requested by counsel was given. In addition, the court extensively instructed the jury on the government's burden of proof and the defendant's presumption of innocence; consequently, the government submits that if an error was made, it was harmless.

A. The prosecutor's comments concerning the telephone conversation were entirely proper.

We note at the outset that at trial, no objection was made to either of the prosecutor's references to the taped telephone conversation and no corrective instruction or charge was sought. Thus on appeal Lopez can prevail only if he can establish that the statements were so prejudicial as to constitute plain error affecting substantial rights of the accused. Rules 30, 52(b), Fed. R. Crim. P.; *United States v. Briggs*, 457 F.2d 908, 912 (2d Cir.), cert. denied, 409 U.S. 986 (1972).² It is clear that on the facts of this case such a claim must fail.

In the recent case of *United States v. Bubar*, Docket No. 76-1140, slip op. 4519, 4531 (2d Cir. 1977), the Second Circuit reaffirmed the well settled rule that not every objectionable comment in the prosecutor's summation rises to the level of constitutional error:

A constitutional violation occurs only if either the defendant alone has the information to con-

² In *United States v. Perez*, 426 F.2d 1073, 1081 (2d Cir.), aff'd, 402 U.S. 146 (1971), the Court observed that a failure to object not only precludes consideration on appeal, but indicates counsel's own difficulty in finding any prejudice. See also *United States v. Indiviglio*, 352 F.2d 276 (2d Cir. 1965).

tradict the government evidence referred to or the jury 'naturally and necessarily' would interpret the summation as a comment on the failure of the accused to testify.

In *Bubar*, the prosecutor in rebuttal repeatedly referred to each of five defendants' failure to explain or otherwise account for certain evidence in the case—including a telephone call, precisely the evidence commented upon here. (Examples of other evidence referred to in *Bubar* included a fingerprint and a signature under a false claim). The Court held that the defendants were not prejudiced by the prosecutor's remarks, because the thrust of the prosecutor's statements was directed at the prior arguments of defense counsel.

Likewise, in the instant case, from a reading of the entire transcript as well as the summation, it is obvious that the jury would hardly imagine, much less "naturally and necessarily" interpret the prosecutor's summation as a comment on the failure of the accused to testify. See also *United States v. Rodriguez*, 556 F.2d 638 (2d Cir. 1977). Defense counsel's extensive cross-examination of Romero³ and to a lesser extent Special Agent Giamo,⁴ which interrogations were replete with counsel's bald assertions of fact as well as his comments on the testimony, dominated the trial.⁵ The prosecutor's com-

³ The direct examination of Romero is reported at T. 11-39; defense counsel's cross-examination, extending over two days, is reported at T. 44-209.

⁴ The direct examination of Giamo is reported from T. A. 32 to 49; defense counsel's cross-examination appears at T. A. 50 to 88.

⁵ One egregious example of counsel's conduct occurred at the beginning of the second day of Romero's cross-examination:

Rapoport: Mr. Lopez [sic], I am going to tell you before this Court and this jury that in the next five minutes, I am going to compel you to say that you lied under oath twice yesterday . . . (T. 107).

[Footnote continued on following page]

ments in summation attempted to rebut defense counsel's repeated claim that Romero was lying by noting that the taped telephone conversation was inconsistent with that contention. The prosecutor's remarks simply invited counsel to produce additional argument during his summation, and did not ask the defendant himself to produce evidence.

It is also apparent that the defendant did not exclusively possess information or evidence which would contradict the government's contention that the telephone conversation was incriminatory. Thus counsel, in his summation, argued that Lopez was innocent because if Lopez had known Romero was bringing cocaine into this county, he would not have accepted Romero's call when it came four hours later than it should have. (T. 38-41). Counsel further argued that the telephone call was un-

In addition to making extemporaneous speeches counsel frequently worded side comments or arguments into his questions. For example:

Rapoport: Mr. Romero, I am going to read you your testimony before the Grand Jury. You are going to find that it says absolutely nothing of the sort—(T. 50)

and:

Q. Would you like to tell the jury your version of what you told the Grand Jury that day.

A. Yes.

Q. Go ahead, Mr. Romero, enlighten us. (T. 62).

and:

Q. You're not going to lie to me again, are you Mr. Romero. (T. 127).

and:

Q. I don't really care what you could have done. What you have done. What you may have done, what you have considered doing. I am asking you for the simple plain truth, if you can find it in your heart to answer a question that way . . . (T. 150).

A fairly complete listing of where these comments may be found in the transcript is: T. 50, 55, 59, 62, 73, 75, 81, 106, 107, 111-113, 115, 127-131, 136, 140, 142, 145, 150, 172, 182, 204; and T. A-53, 66, 69, 73, 75, 79, 81.

important and was not evidence of defendant's guilt. (T. B. 58).

In conclusion, it is apparent from counsel's failure to object either at the time the prosecutor's comments were made, or prior to the trial judge's charge, or at any time prior to this appeal, that at the time of the trial the statements were understood to mean precisely what they literally say: "— I'm interested in hearing in summation Mr. Rapoport's explanation of [the telephone call]."

Moreover, in view of defense counsel's conduct during the trial, which prompted the summation comments by the prosecutor, he should "hardly expect to gain judicial sympathy or redress for having goaded a prosecutor to skirt close to the line." *United States v. Canniff*, 521 F.2d 565, 571 (2d Cir. 1975), *cert. denied*, 423 U.S. 1059 (1976).

B. The prosecutor's comments concerning defendant's work records were entirely proper.

During defense counsel's cross-examination of Arturo Romero he asked the following "questions":

"Q. Did you know that Mr. Lopez worked?

A. Yes.

Q. And you knew he had a job with Daniel Young and Company as a clerk for \$120 a week and he worked there for four years?

Mr. Huffman: Objection.

Q. Did you know he worked for Daniel Young and Company?

A. He didn't tell me that he was working for any company.

* * * * *

(T. 145-146)

The prosecutor, while summing up (see language quoted *supra* at p. 6), asked defense counsel to support with Lopez's employer's business records his suggestion that defendant worked. The Second Circuit has repeatedly held that the prosecutor may comment on a defendant's failure to call witnesses, *United States v. Bubar, supra*; *United States v. Rodriguez*, 556 F.2d 638 (2d Cir. 1977); *United States v. Dioguardi*, 492 F.2d 70, 81-82 (2d Cir.), *cert. denied*, 419 U.S. 873 (1974), and has approved a prosecutor's referral to a defendant's power to subpoena witnesses. *United States v. Floyd*, Docket No. 76-1462, slip op. 3495, 3499 (2d Cir. 1977); *United States v. Arredo-Sarmiento*, 545 F.2d 785 (2d Cir. 1976), *cert. denied*, 430 U.S. 917 (1977).

Although the government maintains that the prosecutor's comment was proper, defense counsel objected to this language and asked the court to instruct the jury to disregard the comment, which the court did (T. B. 27). Further, the court in its charge instructed the jury three separate times that the defendant does not have to prove his innocence or submit evidence on his own behalf (T. B. 72-74, 81, 94). Defense counsel did not object to the charge nor did he seek any additional instructions. It is apparent then, that if an error was committed, the judge's curative instructions and subsequent charge completely remedied it.

Finally, both of Lopez's claims that the prosecutor's summation called the jury's attention to the defendant's failure to testify appear disingenuous when counsel commented so much more strongly in his own summation:

If I felt he should have taken the stand, then he would have. (T. B. 47)

The record thus makes plain that defendant suffered no prejudice from the prosecutor's remarks on summation, and his conviction should accordingly be affirmed.

POINT II

There was no error in the court's instructions to the jury.

Lopez claims that the court erred in failing to issue cautionary instructions to the jury that no adverse inference could be drawn from defendant's failure to testify or produce evidence in his behalf. We believe this claim is totally without merit.

As discussed in Point I, *supra*, counsel failed to object to the arguments of the prosecutor concerning Lopez's telephone conversation with Romero. No request was made for cautionary instructions, nor was the trial court's attention called to this issue. Moreover, when defense counsel did object to the prosecutor's statements concerning defendant's work records, his objection was sustained and the trial judge immediately made precisely the curative statement that counsel requested (T. B. 27). Additional instructions are contained in the court's charge which, *inter alia*, told the jury that the burden of proof always remains with the government (T. 72-74, 94). Defense counsel neither objected to the charge nor asked for additional cautionary instructions. Having failed to afford the trial court an opportunity to correct these supposed errors, counsel now asks this Court to exercise its discretion, find plain error, and reverse the jury's verdict. It is clear from the record of this case that he cannot obtain such relief.

Lopez relies heavily upon *United States v. Smith*, 500 F.2d 293 (6th Cir. 1974) and *United States v. Burse*, 531 F.2d 1151 (2d Cir. 1976), in support of his claim that the court failed to issue proper cautionary instructions to the jury. In *Smith*, the prosecutor during his summation expressly "required" the defendants to provide a "reasonable explanation". Here, the prosecutor's com-

ments were clearly directed at counsel's arguments, not at the defendant himself. Also, in *Smith*, defense counsel requested cautionary instructions, which were given, but after the verdict, moved for a mistrial on the grounds that the instructions and charge were not sufficient to cure the alleged error. By contrast, in the instant case, counsel neither asked for cautionary instructions with respect to the prosecutor's comments concerning the telephone tape recording, nor moved for a mistrial with respect to the charge or summation arguments. The prosecutor in the *Burse* case committed a string of eight errors, all of which the court cited in reversing the jury's verdict. The statements made in the instant case do not begin to approach either in quantity or quality the statements made in *Burse*.

In conclusion, then, the government contends that proper curative instructions and a thorough charge were given when requested, and that counsel's failure to object further should not result in his now reaping benefits on appeal from his own omissions at trial.

POINT III

The evidence against the defendant was more than sufficient to sustain his conviction.

Lopez pins his claim that the evidence was insufficient to support a guilty verdict on the cross-examination of government witness Arturo Romero. Defendant alleges that Romero's testimony was completely false (Br. 21-27) and apparently believes that if Romero's testimony is discredited, then there was insufficient additional evidence to sustain a conviction.

The government's position is first, that Romero's testimony was, as the jury found, truthful, and second, that the independent evidence, when taken together with that

portion of Romero's testimony which could be corroborated, was sufficient to convict Lopez. We will discuss the independent evidence first in order to place the uncorroborated portion of Romero's testimony in context.

As described in the Statement of Facts, *supra*, the government proved that Romero and Lopez knew each other and by inference, either were close friends or had some significant dealings with each other. The inference is drawn from the fact that Romero had memorized defendant's telephone number in New York, and that Romero's own phone number and address in Venezuela were written in defendant's personal phone book. Inferences such as these, which are drawn from the evidence, must be drawn in favor of the government. *Glasser v. United States*, 315 U.S. 60, 80 (1942); *United States v. Marchisio*, 344 F.2d 653, 662 (2d Cir. 1965).

Moreover, it is undisputed that on February 1, 1977, Romero was carrying a quantity of cocaine into the United States. Defendant maintains that the telephone conversation between Romero and Lopez which was taped that day was innocent because neither party mentions cocaine. (Br. 25). Such an interpretation, however, is not borne out by the peculiar strained language of the call:

Romero: Who am I talking to

Lopez: With a friend

Romero: It's . . . it's me

Lopez: Yes, I already know

(Ex. 14).

This exchange is followed by Lopez remarking, "It went well, right?", and then repeatedly asking whether Romero was "going to get me into any trouble." Further, during this conversation, it is noteworthy that the two

men chose a street corner to meet on, rather than Lopez's apartment or some other more felicitous location.

The government's evidence also established that Lopez remained standing on the street corner, lightly dressed in below freezing weather, for approximately 40 minutes. During this period, he looked in the direction of the coffee shop where Romero was sitting. It would be reasonable for the jury to infer that Lopez saw Romero sitting in the coffee shop, but even if he did not see Romero, would a rational person stand on the corner in those conditions for that period of time unless there was a vital reason to do so? The defendant could have returned to his apartment or gone to another coffee shop, but he chose instead to remain on the street looking in Romero's direction. Finally, Lopez entered the coffee shop, but instead of greeting Romero, he merely nodded and walked to the counter. If Romero were just an old friend, why ignore him after waiting 45 minutes in freezing weather? And regardless of what was said at the counter between Romero and Lopez, why when Romero approached, was Lopez careful to send him quietly outside?

Finally, after his arrest the defendant immediately lied to the agents and denied that he knew Romero or that he was a party to the taped telephone call. All of this evidence, of course, stands against Lopez independently of the testimony of Romero. When connected with Romero's testimony, the case against Lopez becomes overwhelming.

Lopez claims, however, that Romero's testimony was a complete fabrication. He points, for example, to Romero's testimony concerning the time of the first meeting Romero had with him, at which they discussed the importation of cocaine (Br. 22). The defendant fails to direct attention to Romero's responses to defense counsel's question on this point during his further cross-examination:

(Romero) A: "I think that you mix me up yesterday with the question."

(Romero) A: I didn't understand the significance very well.

(T. 207).

Defendant's arguments concerning the rest of Romero's testimony similarly lack real substance when closely examined.

The government concedes that Romero's testimony was often confusing. But, given his background as a young Spanish speaking alien, who at the time of Lopez's trial had spent five months in prison, it would be surprising if his answers were more clear—especially after two days of extremely rigorous cross-examination.

Upon reading Romero's testimony, more than one indication that he was telling the truth appears. For example, the first day of cross-examination defense counsel asked:

(Mr. Rapoport) Q: Mr. Romero, do you remember anything about a white Chevrolet, 1974 Impala that you allegedly stole in Venezuela?

(Romero) A: No.

On the morning of the second day of cross-examination, when asked about his own car, the following colloquy occurred:

(Mr. Rapoport) Q: And would you tell the court what type of car this was?

(Romero) A: I just want——

The interpreter: I will paraphrase what he just said. Yesterday you had asked me a question which I——

(T. 78).

Defense counsel then broke in and stopped the interpreter. After a luncheon recess, counsel returned to Romero's interrupted statement:

(Mr. Rapoport) Q: Did you have occasion this morning when I was asking you a question to refer to a stolen Chevrolet in your answer to the interpreter?

(Romero) A: Yes, but it was not any Chevrolet. It was a Dodge Dart, what you're talking about.

...

Romero, then, voluntarily brought up the issue of the stolen car in an effort to amplify his earlier answer, even though the subject had been closed and his first answer was literally true. Another indication of Romero's truthfulness is his admission that his first description to a law enforcement agent of how cocaine was delivered to him was a lie, even though that description could obviously not be checked or proved to be false (T. 121-122). A further example of Romero's trustworthiness was his persistence in his claim that he told the agents his correct address after his arrest, even when a form completed by the agents showing a false address was waived in front of him; the agent finally testified that Romero's correct address did appear on the second page of the form and that the agent had copied the false address on the first page from Romero's admittedly false passport (T.A. 35-36). Finally, if Romero were creating a story from whole cloth, it would have been easy for him to weave a better story; for example, Romero could have testified that the defendant had asked him whether he had the cocaine, when Romero and Lopez were standing together in the coffee shop.

That the cross-examination by defense counsel confused Romero is apparent. At one point he couldn't even remember the date he brought the cocaine into the United States or the time at which he was arrested. On other

occasions he was obviously uncertain about what phone calls defense counsel was asking him about, or which meetings. But while he was sometimes unsure about dates and times, he never waived from the essence of his testimony: as he emotionally put it,

There is something that is very, very true, that this cocaine is Mr. Lopez's . . . (T. 131).

Finally, Lopez quotes the trial judge's comments during the course of Romero's cross-examination in which the judge expressed doubt about Romero's truthfulness (Br. 20). In response, the government would note that at the conclusion of the government's case, after all of the evidence was in, the judge denied Lopez's motion to dismiss, and the jury returned a verdict of guilty in less than three hours of deliberation. Defendant's challenge to the sufficiency of the evidence should, therefore, be rejected by this Court.

CONCLUSION

The judgment of conviction should be affirmed.

Dated: Brooklyn, New York
February 27, 1978

Respectfully submitted,

DAVID G. TRAGER,
United States Attorney,
Eastern District of New York.

MARY MCGOWAN DAVIS,
RICHARD L. HUFFMAN,
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(Of Counsel).

AFFIDAVIT OF MAILING

STATE OF NEW YORK
COUNTY OF KINGS
EASTERN DISTRICT OF NEW YORK

} ss

Barbara Allen

being duly sworn,

deposes and says that he is employed in the office of the United States Attorney for the Eastern District of New York.

That on the 2nd day of March 19 78 he served a copy of the within
Brief for the Appellee

by placing the same in a properly postpaid franked envelope addressed to:
Robert Jay Rapoport, 45 Fox Hunt Crescent, Syosset, N. Y.

and deponent further says that he sealed the said envelope and placed the same in the mail chute
drop for mailing in the United States Court House, ^{225 Cadman Plaza East} ~~Washington Street~~, Borough of Brooklyn, County
of Kings, City of New York.

Barbara Allen

Sworn to before me this

2nd day of March 19 78

Juanita Mayo

JUANITA MAYO
Notary Public, State of New York
No. 314501911
Qualified in New York County
Commission Expires March 20 79